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SUPREME COURT OF THE UNITED STATES.

No. 55.

THE UNITED STATES, APPELLANT,

VERSUS

F. M. ARREDONDO ET AL.

APPEAL FROM THE SUPREME COURT FOR THE EASTERN DISTRICT OF FLORIDA.

ADDITIONAL RECORD.

In the superior court for the eastern district of Florida.

Copies of the opinions of the honorable Joseph L. Smith, Judge of the superior court for East Florida, on the several motions of the law agent of the United States for Florida, and of the United States' attorney for this district, for a continuance of the land claim of F. M. Arredondo and others *vs.* the United States, without showing special cause, and also on their motion assigning special cause by their affidavits; which said opinions were omitted in the record of the said case sent to the Supreme Court of the United States; and which are now certified up, that they may be received as part of the record in the aforesaid claim of F. M. Arredondo and others *vs.* the United States: which said opinions are in the words and figures following, to wit:

Superior court, district of East Florida, November term, 1829.

ARREDONDO et al.
vs.
UNITED STATES. } *Land claim.*

Motion on the part of the defence for a continuance without assigning special cause.

A motion for a continuance of this cause to the next term of this court has been submitted by the counsel of the United States, who rest their claim for that continuance on the general character of chancery proceedings, the rules of the Supreme Court of the United States, the practice of the high court of chancery in England, and the magnitude and importance of the claim.

In deciding on this motion, the attention of the court is called to the acts of Congress, from which is derived its jurisdiction over land claims. By

these acts it is provided that every petition of a land claimant *shall be tried* without *any continuance*, except for *cause shown;* and that the claim shall be for ever barred, both in law and equity, if, by reason of neglect or delay in the claimant, it shall not be prosecuted to a final decision in two years.

These acts furnish a legislative rule to this court, paramount, in authority, to the practice of the high court of chancery in England, or even to the rules of practice of the Supreme Court of the United States.

By the law itself, the rule is enacted that the petition in the case of land claims shall be tried at the first term, unless for *cause shown;* against this provision of the law, the rule of the Supreme Court, which requires *three terms* to obtain a final decree upon a petition taken *pro confesso*, cannot obtain. (Vide 6th rule of the rules of the Supreme Court.)

The delay also contemplated and allowed by the 10th rule of the Supreme Court, and the time by the 25th given for taking depositions, are equally inadmissible in the trial of these land causes.

It is evident to the court, that, to give just effect to the acts of Congress, by which the trial of land claims is *transferred to* and *regulated in* the courts of Florida, the rules of practice for courts of equity, adopted by the Supreme Court, must be considered here as mainly inapplicable, and their operation in these land causes principally done away. The same remark must be true of the practice of the high court of chancery in England, where the proceedings, perhaps from excess of caution, create delay almost incalculable, and transmit a chancery suit from generation to generation.

The whole system of delay, from term to term, and of three and six months, at every step taken in preparing for trial, perhaps often necessary in chancery suits, appears wholly inconsistent with the obligation imposed by the statutes under which the court acts in these causes.

The prosecution of land claims assumes the form of chancery proceedings, in the pleadings, in the mode of taking and recording testimony, in the manner of ascertaining facts and trying issues, in the forms of orders and decrees, but not in the delay; and the rules of the Supreme Court, or of the high court of chancery in England, however well suited they may be found to the comprehensive and almost unlimited importance and jurisdiction of these courts, cannot, so far as they are productive of delay, be admitted in this court in proceeding to the trial of land claims, under special statutes requiring despatch, and making delay penal to the claimants.

No mode of proceeding or of practice should be adopted by the court in these cases productive of more delay than is absolutely necessary to a fair and equitable trial; and that course usually pursued here in chancery cases, and resembling, as regards despatch, admiralty proceedings, seems to me unobjectionable, and most congenial to the evident object of Congress.

The court is of opinion, that, on this motion, a continuance ought not to be granted. The nature of the claim is such, and so well understood (it cannot but be supposed) on the part of the United States, having been years since submitted to their tribunals, and open to the examination of their agents, having been reported to Congress, and the testimony and evidence adduced to sustain it long known, and long ago exhibited and deposited where access might be had to it by any person representing the United States, that it would seem to the court that nothing like surprise could be anticipated, or a want of preparedness to meet the claim supposed, till it be specially shown.

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The magnitude and importance of the claim, rather than furnishing ground for delay, urges on the mind of the court the propriety and the duty of giving to it the earliest trial.

To yield to a different course would be opposed to the interests of the claimants already postponed, if their claim is a just one, nearly to their ruin, to the prosperity of this part of the Territory, in abeyance for years, by reason of these unsettled land claims, and, in this way, to the substantial interests of the United States. To grant delay, not absolutely necessary to an impartial and an intelligible trial, would be to disregard the obligations of the acts of Congress which give jurisdiction to the court, and the obligation also of the treaty with Spain, pledging the faith of the nation to secure to the people of Florida the possession of their lands, where their titles would have been valid under the Spanish Government.

The case cannot be continued unless for *special cause shown;* and for such special and sufficient cause, it will be continued on motion of either party, and at any stage of the proceedings, even after a trial has been commenced, when it shall be perceived that that trial cannot proceed fairly and equitably to either party without such continuance.

Superior court, district of East Florida.

ARREDONDO et al.
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UNITED STATES. } *Land claim.*

Motion for continuance on affidavits filed by the counsel for the defence assigning special causes, viz.

1. The necessity of the testimony of Jacob Summerall, residing in the county of Alachua, to prove that the tribe of Seminole Indians was in the occupation and actual possession of the land claimed at the date of the grant.

2. The want of, and the necessity of procuring certified copies of all the treaties made by Great Britain with the Indians of Florida between the year 1763 and 1783; which treaties are supposed to contain a guaranty to these Indians of a district of country including the land now in question.

3. The want of, and the necessity of procuring certified copies of supposed *talks* or *harangues* had, under authority of the Spanish Government, with these Indians, since 1783, confirming to them the same rights conceded in the British treaties above mentioned.

4. The want of, and the necessity of procuring certified copies of certain residencias of the Governors of East Florida, and of the Intendant Ramirez, of Cuba.

5. The necessity of procuring the testimony of Edgar Macon, to show whether or not certain depositions of Nehemiah Brush and others, now offered in evidence on this trial, were in fact exhibited and received in evidence by the board of land commissioners on the trial of this claim before said board.

In deciding on this motion, the court thinks it pertinent to advert to the history of land claims in Florida since the transfer of the country to the United States, and to take the facts and circumstances presented by this history into consideration. It is now nearly nine years since the Spanish province of East Florida came into the possession of the United States, by virtue of a treaty of cession with Spain; in which the United States guarantied

to the people of the province the possession and enjoyment of their lands, where their titles would have been valid had they remained under the dominion of Spain. The nature and extent of the Spanish grants were early known to Government; and in March, 1823, a board of land commissioners was constituted for East Florida, to receive the claims, to examine and take testimony in regard to them, and, after a thorough investigation of the titles, to report their opinions thereon, together with the evidence, to the Secretary of the Treasury. These reports have made, and communicated from time to time by the Secretary of the Treasury to Congress. The board of land commissioners has been in existence here, under the authority of Government, in some shape or other, from March, 1823, till the close of 1827; after which, jurisdiction, (namely,) in May, 1828, was given in certain cases to this court: during the whole of this period, the United States has been represented in this district as respects this and other grants, and has had opportunity through a course of years to investigate and ascertain their true character, and to point out or obtain the necessary evidence to establish it. The claim in the case now under consideration was early presented to the board of land commissioners, and was among the most important and valuable grants made by the Spanish authorities in East Florida. It has been an object, so far as the court can judge from measures publicly taken, of great interest with Government, to acquire a competent knowledge of these grants, that the true might be distinguished from the false, and that the latter might be rejected, and the former confirmed.

In May, 1828, jurisdiction of claims of the description of this now before the court, was given to the several superior courts of Florida, a law agent was appointed without delay, charged with the interests of the United States in regard to these claims.

The district attorney in each district had also been specially instructed to co-operate with the law agent, and to these, in most cases, has been superadded assistant counsel; all provided for by the law giving jurisdiction to this court. Under these circumstances, when this claim was presented and placed on file in this court, in October, 1828, it could not be considered as new, and then, for the first time, asserted and made known to Government; this view is zealously urged by the counsel for the United States, but cannot be adopted by the court, because the very law under which the court acts, presents to its knowledge all former proceedings; the petition now on file must set forth that the claim has heretofore been duly exhibited before the board of land commissioners, or it will be dismissed; and the proceedings and evidence taken by that board are to be received in this court, both for and against the claim.

Legally, then, as well as from the history of the Territory, the court is bound to consider the facts and circumstances noted in the above detail, and to know that for years this claim, and its character, and the nature of the evidence requisite to sustain or defeat it, have been, or might have been within the knowledge of Government and of its agents, and ought not, therefore, now to grant delay to procure documentary evidence, years ago as evidently necessary as at the present moment, especially when no steps have been taken to procure it till within the last few months.

The *treaties*, the *talks*, and the *residencias*, referred to in the affidavit, are comprehended within this view, and, if necessary to the defence, should have been collected, or at least suitable means to collect them should have been resorted to long before the present time.

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But if the court conceived itself authorized to grant a continuance on account of these documents, no just expectation could be entertained that they would be received within a reasonable time. According to the affidavit, Mr. Barbour was written to in June last to procure copies of the treaties in London: no answer is stated to have been received from him; and the eve of his return, and after his recal, it is not improbable that this subject might escape his attention.

The *talks*, it is stated, cannot be found in the office of the archives here; they have been sought with as little success both at Tallahassee and Washington; but it is *supposed* that they were once, in 1822, in the possession of Captain Bell, and that by him they *may* have been placed in the possession of Mr. Secretary Worthington, in whose office they *may* now be deposited. This series of suppositions affords but little hope that they might be obtained from Baltimore; too slight to be considered a ground for continuance of the cause.

The *residencias* are not known ever to have been made, and, if made, it is equally uncertain where they may be found, whether in Cuba or Spain. If these documents do exist, years might elapse before copies of them could be procured from the Spanish functionaries.

To grant a continuance for either of these causes, when, at the next term, it is probable the evidence would not have been procured, is not admissible; nor is it admissible, as already remarked, if the probability of procuring it were otherwise; because, if such evidence be necessary, measures to obtain it should have been so long postponed.

The court cannot allow a continuance, to obtain the testimony either of Jacob Summerall or Edgar Macon. It is true that the present law agent knew not that Summerall could testify to the point stated till a few days before the commencement of this term; but his predecessor, on the duties of his agency, more than a year since, passed some time in Alachua, near to Summerall's, and might have been informed of it. Be this as it may, the necessity of proving the possession and actual occupation of the Seminole Indians was as apparent when the claim first became known to Government as at the present moment; and now, to continue the cause, that this point may be established by Jacob Summerall, does not appear reasonable, when it is supposed that other persons in the immediate vicinity of the court, residents of the country at the time, and traders among the Indians, must know as well as Jacob Summerall whether Alachua was in their occupation at the date of the grant or not. But Jacob Summerall lives within the jurisdiction of the court, and may at any time within a week be brought before it. As to the testimony of Edgar Macon, it is stated as *merely conjectural*. And the court, on a view of all the causes assigned, is of opinion that the petition ought not to be continued. The general reasons which operate in the mind of the court to forbid a continuance for slight causes, and the grounds upon which a continuance will be granted at any stage of the proceedings, have already been stated in deciding on a previous motion, and need not now be repeated.

Superior court, eastern district of Florida, to wit:

I, George Gibbs, clerk of the said court for the district aforesaid, do hereby certify that the foregoing copies are truly and correctly drawn from the originals on file in my office.